

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
IN CIVIL APPELLATE JURISDICTION**

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SECOND APPEAL NO.147 OF 2021

Ketan G. Khasia

..Appellant

Versus

Rajiv M. Hatkamkar

..Respondent

Mr. Swapnil Newaskar i/by Chetana A. Katkar for the Applicant.
Mr. Chintamani K. Bhangoji, for the Respondent-State.

CORAM : NITIN W. SAMBRE, J.

DATE : 3rd OCTOBER, 2022

PC.

1. Heard.

2. The elections of the appellant society were conducted on 9th May, 2015 as against the notice of election dated 25th April, 2015 Exh.-19.

3. As a sequel of aforesaid elections, change report proceedings were initiated before the Assistant Charity Commissioner pursuant to the provisions of Section 22 of Maharashtra Public Trusts Act 1950 (hereinafter referred as "the said Act" for the sake of brevity). The said proceedings were decided against the present appellant vide order dated 18th April, 2018 which were further confirmed in appeal preferred under Section 70 of the said Act before the Joint Charity Commissioner

Mumbai, vide order dated 30th July, 2019. As such, this second appeal.

4. The change report proceedings are rejected pursuant to the objection raised by the respondent on the ground that the election notice Exh.19 is not in tune with the bye-laws pertaining to the election. According to respondent, the bye-laws provided for clear notice of at least 21 days and the conduct of elections in democratic manner i.e. by secret ballot as far as possible. It is claimed that the notice was dated 25th April 2015 and the elections were held on 9th May 2015. As such, the notice period was only of 14 days and not 21 days as prescribed by the bye-laws. The aforesaid contentions are considered by both the authorities below i.e. Assistant Charity Commissioner and the Joint Charity Commissioner and rejected the prayer of the appellant for acceptance of change report proceedings.

5. The contentions of counsel for appellant Ms. Katkar are, the bye-laws provides for procedure for election of branch and division and not the zonal elections which has a very short electoral roll. According to him, change report proceedings were pertaining to the zonal elections, in which, there was no contest, as only two candidates have submitted their nomination. He would further urge that respondent has never objected to the election proceedings based on bye-laws and that being so, the authorities below i.e. the Joint Charity Commissioner and Assistant Charity Commissioner

have committed an error in acting contrary to the provisions of Section 22 of the said Act. It is claimed that the elections were conducted by giving sufficient period in the notice i.e. of 14 days. The respondent/objector has not demonstrated as to what prejudice is caused to him by notice period of 14 days instead of 21 days as was claimed.

6. Counsel for the respondent would support the judgment impugned, as it is claimed that both the authorities have decided the issue based on the provisions made for elections in the bye-laws.

7. I have appreciated the submissions.

8. The elections of the zonal committee of appellant, a registered body were conducted pursuant to the provisions of the bye-laws which are termed as rules and regulations. Clause 7 of the bye-laws provides for the elected members and such members who are elected to the association as per rules and regulations of the election concerned are termed as elected members. These bye-laws also provides for Zonal Executive Committee. Bye-laws further prescribes qualification for the election to the Zonal Executive Committee. It also prescribes voters, Election Officer, election venue, delegated members and nominated members etc..

9. The clause in relation to all the elections of appellant, as prescribed in the bye-laws which are also termed as rules and

regulations reads thus :-

“ELECTIONS

Elections shall be performed democratically as far as possible through secret ballot for which a due notice shall be given well in advance i.e. 21 days atleast to all the members by the outgoing body. This is applicable in case of divisions/branches as well.

The outgoing Gen. secretary and in his absence additional Genl. secretary shall act as a convenor to hold the Genl. body meeting and to hold the elections for the ZEC. This shall be done in consultation with the outgoing President/working President, Addl. Genl. secreatry/Office secy. Similarly the outgoing secretary of the Branch / division and in his absence the Asst. Secretary shall act as a convenor of the branch/division, Ex. Committee elections. Thus he shall do in consultation with the outgoing team of his branch division etc.

To begin with it is possible to hold elections in the manner indicated above, adhoc-working committee shall be constituted at all levels.

Vacancies arising during the terms of a particular committee shall be filled up by that committee itself by nomination as situation warrant.

ELECTION PROCEDURE

Election shall be held democratically by secret ballot as far as possible every two years for which due notice shall be given well in advance. Elections should be finished one month before advance of the tenure of the body.”

10. The aforesaid bye-laws in clear terms prescribe that the elections are to be performed in democratic manner and as far as possible through secret ballot. The elections are to be conducted by issuing notice to the members. Such notice has to be issued well in advance i.e. 21 days at least before the date of election/voting to all the members and it was the responsibility of the outgoing body to issue such notices. In the case in hand, the election notice as mentioned about 14 days of breathing period from the date the election were notified on 25th April, 2015 and the elections were held on 9th May, 2015 respectively.

11. If this Court appreciates the language employed in the bye-laws which provides for elections, the regulation bye-law uses the word which suffix of holding of elections by issuing notice. As such, the notice for holding election is held to be mandatory. It is further prescribed that “such notice shall be given well in advance i.e. 21 days at least to all the members by the outgoing body”. The aforesaid language speaks of the intention of the framer to be having mandatory effect. If the bye-laws itself provides for notice period of 21 days, then it is not open for the committee members of the outgoing committee to alter the same to 14 days in absence of any expression provision in the bye-laws.

12. The aforesaid bye-law appears to be the basis to both the authorities below in rejecting the change report.

13. Since both the authorities below by relying on the bye-laws have formed an opinion of rejection of the change report proceedings, in my opinion, no illegality could be noticed in the same. As such, against the concurrent findings, no case for interference is made out for want of existence of question of law.

14. The second appeal as such stands dismissed.

[NITIN W. SAMBRE, J.]